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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Uniform Issue List: 408.03-00

FEB 26 2009

SE:T:EP:RA:T3

Legend:

Taxpayer A =

IRA X =

IRA Y =

Checking Account S =

Limited Partnership R =

Amount C =

Financial Advisor T =

Year 1 =

Date 1 =

Date 2 =

Date 3 =

Dear :

This is in response to your letter dated August 20, 2008, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("the Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A asserts that on Date 1 Taxpayer A received a distribution from IRA X in Amount C. Taxpayer A asserts that his failure to accomplish a rollover of Amount C was due to financial advisor error in failing to establish a rollover of Amount C into IRA Y as directed by Taxpayer A.

During Year 1, Taxpayer A discussed with Financial Advisor T his plan for IRA X to make an investment in Limited Partnership R. Subsequently, Taxpayer A learned that the custodian for Taxpayer A's IRA X would not allow an investment in Limited Partnership R but the bank maintaining Taxpayer's IRA Y would accept Limited Partnership R as an investment.

Taxpayer A, acting under the direction of Financial Advisor T, arranged for the distribution on Date 1 of Amount C from IRA X and deposited Amount C into a Checking Account S with the understanding he would be making a rollover contribution of Amount C into IRA Y and then the custodian of IRA Y, pursuant to the plans of Taxpayer A and Financial Advisor T, would subsequently acquire an investment in Limited Partnership R.

Following the direction of Financial Advisor T, Taxpayer A intended to issue a check in Amount C payable to IRA Y as a rollover of Amount C. However, Financial Advisor T intervened and instead specifically instructed Taxpayer A to make the Amount C check payable to the escrow agent for Limited Partnership R. Following the direction of Financial Advisor T, Taxpayer A issued a check on Date 2, from Checking Account S payable to the escrow agent for Limited Partnership R in Amount C. After Financial Advisor T received Amount C he issued an acknowledgement of receipt of Amount C to Taxpayer A but failed to complete the rollover of the Amount C investment in Limited Partnership R into IRA Y as Taxpayer A intended. Taxpayer A did not discover the failure until after the 60-day period expired. Financial Advisor T issued a letter dated Date 3, in which he claimed full responsibility for failing to complete the rollover of Amount C into IRA Y as intended by Taxpayer A. Taxpayer A further represents that he has not used Amount C for any other purpose.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement, with respect to the distribution of Amount C, contained in section 408(d)(3) of the Code ("the Code").

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a rollover of Amount C was due to financial advisor error in failing to establish a rollover of Amount C into IRA Y as directed by Taxpayer A.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount C from IRA X. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount equal to Amount C to an IRA (or IRAs) described in Code section 408(a). Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you have any questions, please contact

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose